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*Hoogland*, 39 Ohio St. 671; without explanation, it might then be conclusive. But it is one of evidence only and is not a rule of law. *English v. Commission Co.*, 48 Fed. 196; except where the deficiency is merely formal, as of time, place, etc. *Morse v. Moore*, *supra*. This is the prevailing view in England and in most of our jurisdictions. *Chandelor v. Lopus*, 1 *Smith Lead Cas.* (8th Ed.), pt. 1, 299, 360. Though some jurisdictions, notably New York, hold that there is a waiver by knowledge, where the warranty sprang from an essential term of the contract. *Burdick on Sales*, 135, where the two views are discussed.

**SPECIFIC PERFORMANCE—DECREE AS TO PART INTEREST—INTENTION OF PARTIES.**—*TILLERY v. LAND*, 48 S. E. 824 (N. C.).—Where one of several owners of land contracts to sell the entire property and a conveyance from the other proprietors cannot be obtained, *held*, that, since the vendor's intention was not to dispose of his own interest separately, in the absence of bad faith, specific performance as to his share will not be decreed. Clark, C. J., and Montgomery, J., *dissenting*.

In general inability to completely perform is no defense to a bill for partial performance. *Bell v. Thompson*, 34 Ala. 633; *Sweptson v. Johnson*, 84 N. C. 449. This rule applies to a tenant in common who without authority agrees to sell the entire property. *Keaton v. Brown*, 57 N. J. Eq. 600. It seems, however, that the contrary would be the rule in the absence of bad faith. *Lumsley v. Ravenscroft*, 1 Q. B. 683; *Cochran v. Blout*, 161 U. S. 350. In *Jackson v. Torrance*, 83 Cal. 521, it was held that when a husband and wife agree to sell property and the wife refuses to convey, specific performance as to the husband's share will not be decreed, as such a contract was never contemplated by the parties; and, analogously, an agreement for the sale of property, including a homestead, which is void as to the homestead, cannot be specifically enforced as to the remainder. *Hall v. Loomis*, 63 Mich. 709.